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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

04/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/664,535	Applicant(s) LOCKWOOD ET AL.	
	Examiner MICHAEL G. BOGART	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-35, 38 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32, 38 and 40 is/are rejected.
- 7) ☒ Claim(s) 33-35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/19/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections § 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 32 and 40 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kajiware *et al.* (US 5,762,640 A; hereinafter “Kajiware”).

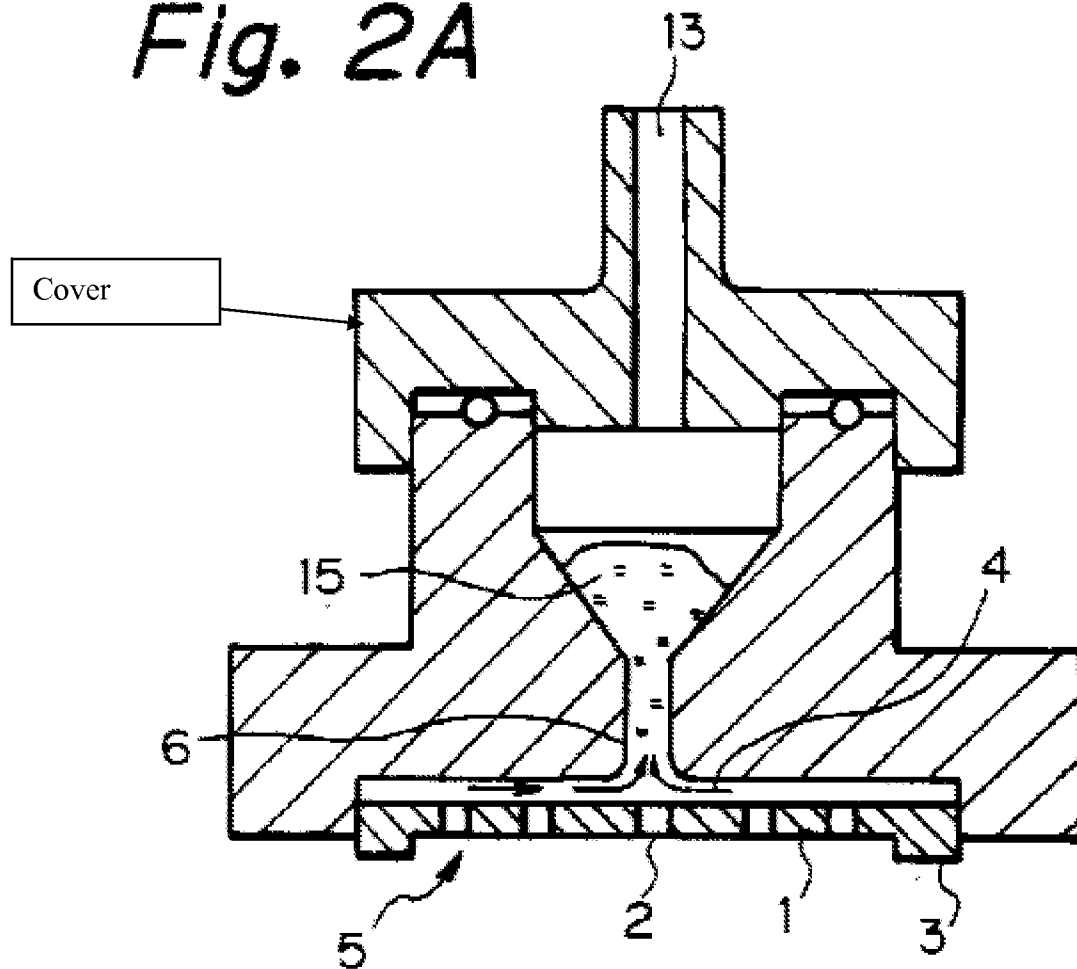
Kajiware teaches a method of providing treating an open wound having a wound surface located inwardly of healthy skin surrounding the open wound, the method comprising:

providing a relatively thin and flexible member (1) having a wound contacting surface with holes (2) in the wound contacting surface, a port (6) to be attached to a vacuum source and a plurality of channels (4) extending between the holes (2) and the port (6), and spacers (3) coupled to the wound contacting surface, wherein the spacers and the wound contacting surface are made from the same material;

positioning the member (1) so that at least a portion of the member (1) is inside the open wound having at least some of the spacers (3) resting against the wound surface to space the wound contacting surface of the member (1) apart from the wound surface, and

providing a cover over the member (1) to define a space above the wound surface in which a vacuum is formed when the port (6) is connected to a vacuum source (abstract; col. 3, lines 1-17)(see annotated figures 2A and 3, *infra*).

Fig. 2A

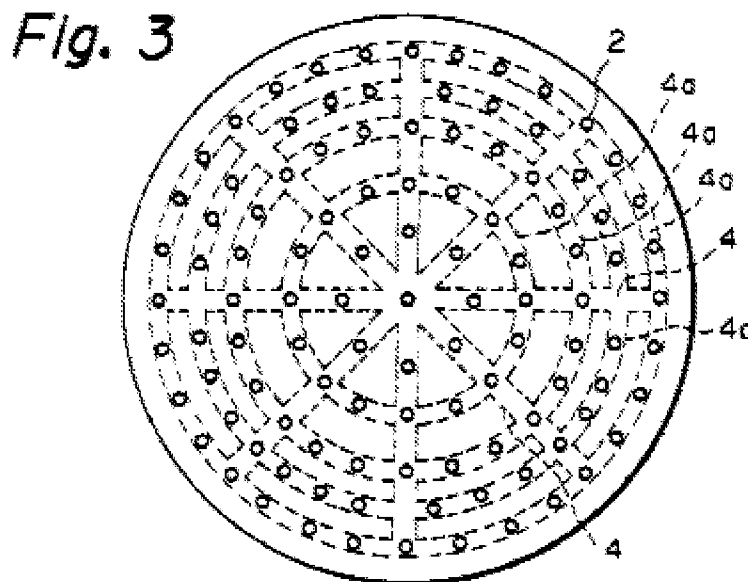


Regarding the interpretation of the term “channel”, it is construed herein as meaning a conduit or pathway. See *Merriam Webster’s Collegiate Dictionary*, 10th Edition (1996). See also, *Roget’s New Millennium™ Thesaurus, First Edition (v 1.3.1)(2007)*. The claims must be given the broadest reasonable interpretation. MPEP § 2111. Applicants have not provided a specific definition of the term channel that precludes this interpretation.

Regarding the terminology, “thin and flexible”, these are relative terms as stainless steel and the like can be flexed when sufficient force is applied.

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It is noted that the adhesive spacer layer (3) directly contacts the wound during use.



Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

2. Claim 38 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gross (US 5,549,584 A) in view of Olson (US 5,735,833 A).

Gross teaches a method of providing treating an open wound having a wound surface located inwardly of healthy skin surrounding the open wound, the method comprising:

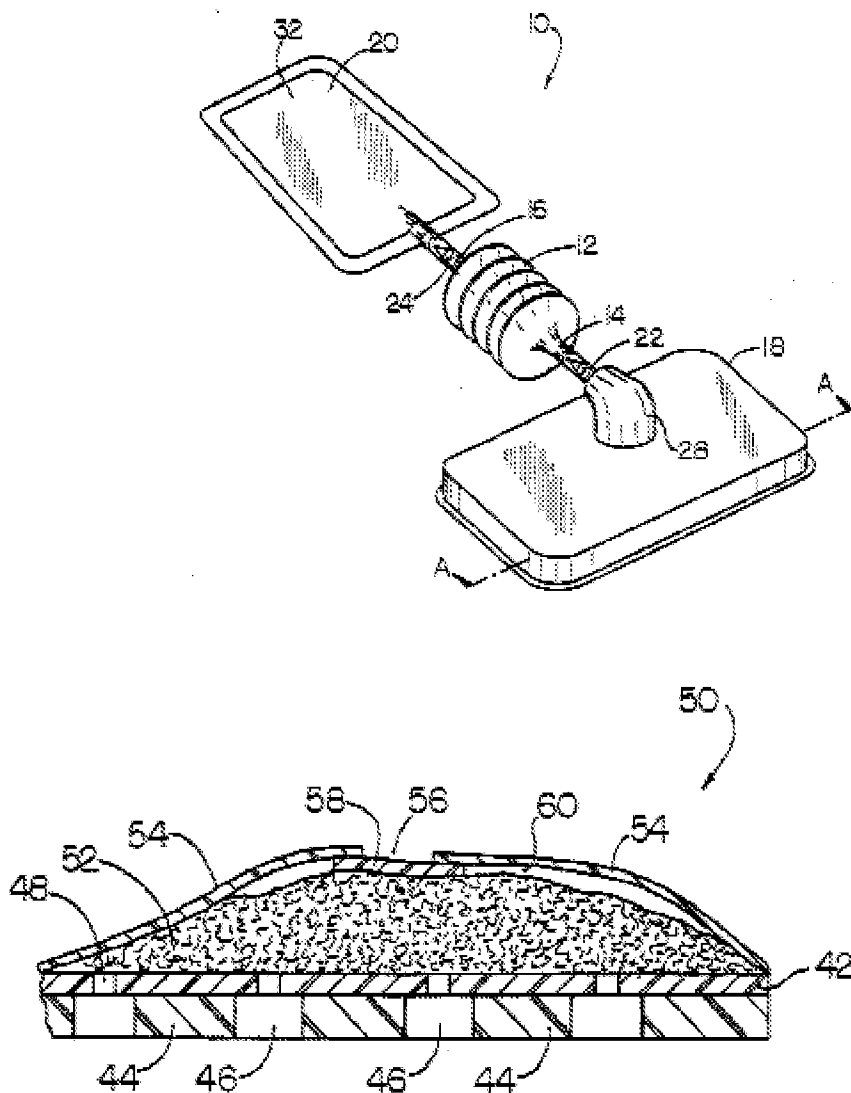
providing a relatively thin and flexible member (42, 44) having a wound contacting surface with holes (48) in the wound contacting surface, a port (28, 56) to be attached to a vacuum source (12) and a plurality of channels (interstices in absorbent fabric (52)) extending between the holes (48) and the port (28, 56), and spacers (44) coupled to the wound contacting surface, positioning the member (42, 44) so that at least a portion of the member (42, 44) is inside the open wound having at least some of the spacers (44) resting against the wound surface to space the wound contacting surface of the member (42, 44) apart from the wound surface, and

providing a cover (18) over the member to define a space above the wound surface in which a vacuum is formed when the port (28, 56) is connected to a vacuum source (12)(col. 4, lines 56-67; col. 6, lines 10-46; col. 7, lines 41-50)(see figures 1 & 4, *infra*).

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Regarding the interpretation of the term “channel”, it is construed herein as meaning a conduit or pathway. See *Merriam Webster's Collegiate Dictionary*, 10th Edition (1996). See also, *Roget's New Millennium™ Thesaurus, First Edition (v 1.3.1)(2007)*. The claims must be given the broadest reasonable interpretation. MPEP § 2111. Applicants have not provided a specific definition of the term channel that precludes this interpretation.

It is noted that the adhesive spacer layer (44) directly contacts the wound during use.



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Gross does not teach the step of irrigating a wound through that device.

Olson teaches irrigation ports (52, 64) that deliver irrigating fluids to a wound site (see figure 5, infra). Adding these ports on Gross' cover (18) adjacent to Gross' port (28) would result in fluid passing through holes before irrigating the wound.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the irrigating ports and steps for irrigating a wound with the device and vacuum methods of Gross in order to provide for comprehensive treatment of a wound.

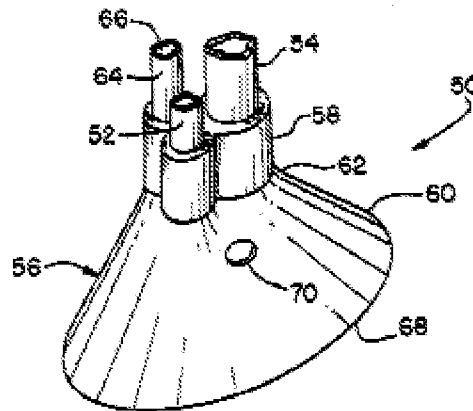


FIG. 5

Allowable Subject Matter

3. Claims 33-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 25 January 2008 have been fully considered but they are not persuasive.

Regarding claim 38, applicants assert that Olson teaches multiple separate ports to accommodate the separate suction and irrigation functions of that device, while the instant invention claims a single port for these functions. This argument is not persuasive because merely making what is known in the art to be separable, integral is not sufficient to patentably distinguish the claimed invention over the prior art. See *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965). MPEP § 2144.04.

Furthermore, this argument is not persuasive because the neck (34) of Olson can be reasonably construed as a single port. Also, applicants use the transitional phrase “comprising”. The transitional term “comprising”, which is synonymous with “including,” “containing,” or “characterized by,” is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) (“like the term comprising,’ the terms containing’ and mixture’ are open-ended.”). MPEP § 2111.03. Applicants’ single port does not preclude additional ports.

Applicant's arguments with respect to claims 32 and 40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael G. Bogart/

Examiner, Art Unit 3761

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767